

Attorney Docket No: 20341-67618
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James M. KAIN Confirmation No. 9889
Serial No.: 09/871,199 Art Unit: 3636
Filed: May 31, 2001 Examiner: Joseph F. Edell
For: JUVENILE SEAT ARMREST

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Barnes & Thornburg Customer No: 23643 U.S. Patent and Trademark Office

Sir:

This is in reply to the examiner's answer mailed February 22, 2007.

The examiner's answer includes a plurality of misstatements as follows:

1) examiner's answer at page 4, it is stated "Appellant concedes that Marrujo teaches a support mount for use in a chair that includes inner and outer flanges (see Figs. 1 & 4) adapted to receive outwardly arranged fasteners." There is no citation of the basis for this conclusion and no such concession has been stated by appellant.

2) examiner's answer at page 7, it is stated "Appellant concedes that such a motivation existed within the knowledge generally available to one of ordinary skill regarding the claimed armrest attachment configuration." There is no citation of the basis for this conclusion and no such concession has been stated by appellant.

3) examiner's answer at page 7, it is stated "Appellant concedes that upper wings of an armrest support mount including the first fastener arranged to lie above the arm is generally available to one of ordinary skill in the art." There is no citation of the basis for this conclusion and no such concession has been stated by appellant.

Rejection over Lemmeyer et al in view of Marrujo - independent claim 6.

At page 6 of the examiner's amendment it is urged that "[b]ecause Lemmeyer et al. contemplate multiple attachment configurations not employing the top surface abutting the upper shelf, it is clear that the recited abutment of the top surface 106 with the upper shelf 112 is not the principle of operation of Lemmeyer et al.'s armrest."

The conclusion that Lemmeyer et al.'s alternative attachment configuration does not employ the top surface abutting the upper shelf is a conclusion without basis in fact. Nothing in Lemmeyer et al. suggests that the alternative attachments do not include the top surface abutting the upper shelf.

The examiner's amendment goes on to state that "[a]ssuming arguendo that the recited abutment of the top surface 106 with the upper shelf 112 was the principle of operation of Lemmeyer et al.'s armrest, the combination of Lemmeyer et al. in view of Marrujo would not undermine this principle of operation. Modifying the support mount of Lemmeyer et al. to include an upper wing, as taught by Marrujo, would still provide a continuous flat surface for abutting the inner and outer edges of the upper shelf."

Abutting the inner and outer edges of the upper shelf is clearly an inferior support when compared with abutment of the entire faces of the arm and the shelves. For at least this reason the examiner's answer provides no proper motivation for modification of Lemmeyer et al. using Marrujo's leg.

Conclusion of Argument

All of the arguments in the final office action and the examiner's answer are overcome by the arguments in appellant's brief or this reply brief.

Withdrawal of the rejections of claims 4, 11-12, 27-29 and 31 is acknowledged with appreciation. Claims 4 and 31 are in allowable form.

For the foregoing reasons, the appellant, respectfully, requests that the remaining rejections (of claims 5-9, 11-14 and 25-30) be reversed and the application be allowed.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (20341-67618).

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in cursive script, appearing to read "Richard B. Lazarus".

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